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8 JAMES MAURICE DUCKETT,
9 Plaintiff,
10 v.
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12 P. GARCIA,
13 Defendant.
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15 Case No. 24-cv-00536 BLF (PR)
16 **ORDER OF DISMISSAL**
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18 Plaintiff, a state prisoner, filed the instant pro se civil rights action pursuant to 42
19 U.S.C. § 1983 against Correctional Officer P. Garcia for events that occurred at Salinas
20 Valley State Prison (“SVSP”). Dkt. No. 8. Plaintiff has filed a motion for leave to
21 proceed *in forma pauperis*. Dkt. No. 9. Plaintiff is currently at the California Medical
22 Facility. Dkt. No. 6.

23 Plaintiff filed a previous action in this district against the same Defendant, making
24 the same allegations as in the instant action and seeking damages. The previous action,
25 *Duckett v. Garcia*, Case No. 23-cv-04748 BLF (“*Duckett I*”), was served on Defendant and
26 is pending briefing. *Id.*, Dkt. Nos. 13, 19.

27 Duplicative or repetitious litigation of virtually identical causes of action is subject
28 to dismissal under 28 U.S.C. § 1915 as malicious. *Bailey v. Johnson*, 846 F.2d 1019, 1021

1 (5th Cir. 1988). An *in forma pauperis* complaint that merely repeats pending or previously
2 litigated claims may be considered abusive and dismissed under § 1915. *Cato v. United*
3 *States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *Bailey*, 846 F.2d at 1021. An *in forma*
4 *pauperis* complaint repeating the same factual allegations asserted in an earlier case, even
5 if now filed against new defendants, therefore is subject to dismissal as duplicative.
6 *Bailey*, 846 F.2d at 1021; *Van Meter v. Morgan*, 518 F.2d 366, 368 (8th Cir. 1975).
7 “Dismissal of the duplicative lawsuit, more so than the issuance of a stay or the enjoinder
8 of proceedings, promotes judicial economy and the “comprehensive disposition of
9 litigation.” *Adams v. California*, 487 F.3d 684, 692-93 (9th Cir. 2007) (citation omitted),
10 *overruled on other grounds by Taylor v. Sturgell*, 553 U.S. 880, 904 (2008). Here,
11 Plaintiff’s case is duplicative of *Duckett I* because the two suits arise out of the same
12 transactional nucleus of facts, *i.e.*, a cross-gender body search by Defendant P. Garcia on
13 January 9, 2020, in violation of Plaintiff’s civil rights. *Compare* Dkt. No. 8 at 3 *with*
14 *Duckett I*, Dkt. No. 1 at 4. As this case is duplicative of *Duckett I*, the instant action will
15 be dismissed.

16
17 **CONCLUSION**

18 For the foregoing reasons, the complaint is **DISMISSED** as duplicative.

19 The Clerk shall terminate all pending motions and close the file.

20 **IT IS SO ORDERED.**

21 **Dated:** April 29, 2024


BETH LABSON FREEMAN
United States District Judge